

November 15, 2002

Honorable Kent Conrad  
Chairman  
Committee on the Budget  
United States Senate  
Washington, DC 20515

Dear Mr. Chairman:

At your request, the Congressional Budget Office has reviewed section 3 of an amendment in the nature of a substitute to H.R. 5063, the Armed Forces Tax Fairness Act of 2002. Under current law, there can be no administrative or judicial review of actions taken by the Secretary of Health and Human Services to determine the conversion factors used to calculate the rates for Medicare payments to physicians. Section 3 would clarify that such determinations include any prospective redeterminations of the sustainable growth rates (SGRs) for any or all previous fiscal years—that is, that any such redeterminations of SGRs would not be subject to administrative or judicial reviews.

CBO believes that section 3 would not provide the Administration with any additional legal authority to modify the physician fee schedule, but we have also indicated that enactment of this provision might trigger Administration actions that could result in substantial costs to the government. There are growing indications that the Administration would use this provision as the basis for raising the rates for Medicare payments to physicians, by correcting previous errors in the forecast of the sustainable growth rate for fiscal years 1998 and 1999. CBO has been uncertain as to whether enactment of this provision would lead to Administration action, and we are continuing to assess the likelihood of such a response.

You asked what the cost would be if enactment of section 3 results in a correction of forecast errors in the physician fee schedule for fiscal years 1998 and 1999. Under that assumption, CBO estimates that direct spending for

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Medicare benefits would increase by \$1.2 billion in fiscal year 2003, \$21 billion over the fiscal years 2003 through 2007, and \$43 billion over the 2003-2012 period.

If you would like further details about this estimate, we would be pleased to provide them. The CBO staff contact is Tom Bradley.

Sincerely,

Dan L. Crippen  
Director

cc: Honorable Pete V. Domenici  
Ranking Member

Identical letter sent to Honorable Max Baucus